

## **REMARKS/ARGUMENTS**

This is intended to be a complete response to the Official Action mailed June 28, 2004, in which claims 1-16 were rejected. Claims 9, 13, and 15 have been amended to clarify the claims. Claims 1-16 remain pending.

### **Double Patenting**

The claims have been rejected under double patenting over one or more of the following U.S. Patents: 5,307,606; 5,479,758; 5,699,648; 5,956,898; 6,192,625; 6,418,662; and 6,499,253. Applicant submits herewith a terminal disclaimer over said patents thereby mooting the double patenting rejection.

### **First Rejection under 35 U.S.C. §103(a)**

Claims 1, 4, 5, 8, 9, 12, 13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Landau (US 5,235,782) 1993.

In the rejection it is stated:

"Landau does not depict the outer surface area of the lower portion as less than the outer surface area of the upper sleeve portion when the upper sleeve portion is detached from the lower portion as cited."

It is further stated:

"Landau does depict a tear line (26) which would be obvious to one of ordinary skill in the art to relocate anywhere along the sleeve outer portion making capable the outer surface area of the lower portion to be less than the outer surface area of the upper sleeve portion as cited."

In essence, the Examiner indicates that the Landau sleeve does not teach the presently claimed invention, but that it would be obvious to modify the sleeve of Landau by relocating the tear line anywhere on the sleeve thereby altering the respective sizes of the surface areas of the lower portion and the upper portion.

Applicant respectfully traverses the Examiner's basis for the rejection.

Landau teaches a sleeve having a narrow detachable upper portion 28 which is used to support the sleeve on a wicket until the sleeve is torn away to be used to carry a pot (see for example Col. 2, lines 23-32; and Col. 3, lines 20-39 of Landau). The remainder of the sleeve is a "base portion" 12 for covering a pot and a "top portion" 14 for surrounding the plant portion of a potted plant.

The top portion 14 is sized to surround and enclose the plant and has a cut out 18 for carrying the sleeve and potted plant (see Fig. 2).

The teachings of Landau inherently and explicitly go against the idea that the tear line could be "anywhere" in the sleeve.

First, the top portion 14 has to be sufficiently large to substantially cover the potted plant.

Second, the top portion 14 has to be sufficiently large to be folded down to cover the pot (see Fig. 3 and Co. 3, lines 63-66 of Landau).

Third, claim 1 explicitly states that the "top portion is non-detachably connected to the base portion" (claim 1, element C, emphasis added).

According to the teachings of Landau, the detachable upper portion of the sleeve (which only serves the function to support the sleeve on a wicket) would have to be much smaller than the base portion and the top portion, therefore it would be impossible for the outer surface area of the detachable upper portion to be larger than the outer surface area of the lower portion of the sleeve. If the detachable portion were larger than the base portion and top portion, the wastage when the upper portion was detached would be commercially non-viable.

Further, even if the tear line was moved to the position on the sleeve sufficient to satisfy the requirements of the present claims, the "top portion" of Landau's sleeve would then be detachable, contrary to the requirements as set forth in claim 1 of Landau. Landau teaches against such a positioning of the tear line.

In view of the above, Applicant respectfully submits the rejection is overcome and respectfully request reconsideration and withdrawal of the rejection under 35 U.S.C. §103(a).

### **Second Rejection under 35 U.S.C. §103(a)**

Claims 2, 3, 6, 7, 10, 11, 14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Landau (US 5,235,782) 1993, as applied to claim 1 above, and further in view of Witte (US 4,333,267) 1982.

Applicant respectfully traverses the rejection for the same reasons provided in the response to the first rejection under §103. The Witte reference does not remedy the deficiencies of the Landau reference.

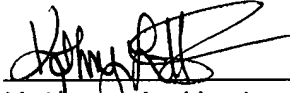
In view of the above, Applicant respectfully submits the rejection is overcome and respectfully request reconsideration and withdrawal of the rejection under 35 U.S.C. §103(a).

### **Conclusion**

In view of the above, Applicant respectfully submits the pending claims are now in a condition for allowance and requests issuance of a Notice of Allowance thereof.

Should the Examiner have any questions regarding the Amendments to the claims or the Remarks contained herein, Applicant's agent would welcome the opportunity to discuss same with the Examiner.

Respectfully submitted,



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